



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC455

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final determination and discussion of underlying biological analysis.

SUMMARY: NMFS has evaluated the Tribal Resource Management Plan (Plan) submitted by the Shoshone-Bannock Tribes (Tribes) to NMFS pursuant to the limitation on take prohibitions for actions conducted under the Tribal Rule of section 4(d) for salmon and steelhead promulgated under the Endangered Species Act (ESA). The plan specifies fishery management activities in the Salmon River sub basin of Idaho. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has determined pursuant to the ESA Tribal 4(d) Rule for salmon and steelhead that implementing and enforcing the Plan will not appreciably reduce the likelihood of survival and recovery of ESA-listed salmon and steelhead.

DATES: The final determination on the Plan was made on January 11, 2013.

ADDRESSES: National Marine Fisheries Service, Salmon Management Division, 1201 N.E. Lloyd Boulevard, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Enrique Patiño at (206) 526-4655, or e-mail: [Enrique.Patino@noaa.gov](mailto:Enrique.Patino@noaa.gov).

## SUPPLEMENTARY INFORMATION:

### Species Covered in This Notice

Chinook salmon (Oncorhynchus tshawytscha): threatened, naturally produced and artificially propagated Snake River spring/summer.

Chinook salmon (O. tshawytscha): threatened, naturally produced and artificially propagated Snake River fall-run.

Steelhead (O. mykiss): threatened, naturally produced and artificially propagated Snake River basin.

Sockeye (O. nerka): endangered, naturally produced and artificially propagated Snake River.

### Background

The Shoshone-Bannock Tribes have submitted to NMFS a Tribal Plan describing the management of ceremonial and subsistence fisheries in the Salmon River basin in the State of Idaho. The objective of the Tribal Plan is to harvest spring Chinook salmon in a manner that does not appreciably reduce the likelihood of survival and recovery of the ESU. Impact levels on the listed spring Chinook salmon populations in the ESU are specified by a sliding-scale harvest rate schedule based on run size and escapement needs as described in the Tribal Plan. The Tribal Plan sets maximum harvest rates for each management unit or population based on its status, and assures that those rates or objectives are not exceeded. A variety of monitoring and evaluation tasks to be conducted by the Shoshone-Bannock Tribes is specified in the Tribal Plan to assess the abundance of spring Chinook salmon and to determine fishery effort and catch. A comprehensive review of the Tribal Plan to evaluate whether the fisheries and ESA-listed salmon and steelhead populations are performing as expected will be done within the proposed fishery

season and at the end of the proposed season.

Under section 4(d) of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS has issued a final ESA 4(d) Rule for Tribal Plans adopting regulations necessary and advisable to harmonize statutory conservation requirements with tribal rights and the Federal trust responsibility to tribes (50 CFR 223.209).

This 4(d) Rule for Tribal Plans applies the prohibitions enumerated in section 9(a)(1) of the ESA. NMFS did not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to fishery harvest activities if the fisheries are managed in accordance with a Tribal Plan whose implementation has been determined by the Secretary to not appreciably reduce the likelihood of survival and recovery of the listed salmonids.

As specified in the Tribal 4(d) Rule, before the Secretary makes a decision on the Tribal Plan, the public must have an opportunity to review and comment on the pending determination. NMFS made the proposed evaluation and pending determination available for public review, and the final evaluation and determination reflect consideration of comments received.

#### Discussion of the Biological Analysis Underlying the Determination

The management objective is for the Tribes to conduct fisheries in a manner that does not appreciably reduce the likelihood of survival and recovery of listed Chinook salmon. The Plan includes provisions for monitoring and evaluation to assess fishing-related impacts on Snake River spring/summer Chinook salmon. Performance indicators include dam, weir, and redd counts, harvest estimates, and escapement with respect to escapement goals. The proposed Plan provides the framework through which Tribal salmon fisheries could be implemented while meeting requirements specified under the ESA.

The Tribes intend to engage in ceremonial and subsistence harvest of both hatchery and natural-origin spring/summer Chinook salmon. Annually, the Tribes would issue season regulations detailing the timing and season regulations for tributary fisheries consistent with this long-term Plan. Under the Plan, the Tribes would manage all Chinook salmon fisheries to achieve escapement objectives using population-specific, abundance-based harvest rate schedules to limit ESA take according to year-specific adult escapement abundances. As a result, weaker populations will sustain less harvest and as the number of predicted adults increase, the number of fish escaping to the spawning grounds will also increase.

To achieve its conservation objectives, the Plan employs a number of key strategies as part of their harvest conservation measures, including: (1) fishery-related redistribution of the conservation burden historically borne by fisheries; (2) use of threshold points to restrict the take of ESA-listed fish; and (3) application of a sliding scale approach to determine appropriate ESA take limits on critically low runs as well as on healthier runs at levels that may not slow recovery.

The Plan includes provisions for annual reports that will assess compliance with performance standards established through the Plan. The monitoring and evaluation described in the Plan will focus on two primary performance indicators: adult and juvenile abundance, and the overall assessment of abundance and productivity measures for each population. Reporting and inclusion of new information derived from Plan research, monitoring, and evaluation activities provides assurance that performance standards will be achieved in future seasons.

#### Summary of Comments Received in Response to the Proposed Evaluation and Pending Determination

NMFS published notice of its proposed evaluation and pending determination on the Plan

for public review and comment on May 30, 2012 (77 FR 31835). The proposed evaluation and pending determination and an associated draft environmental assessment were available for public review and comment for 30 days.

NMFS received one set of comments, from the Nez Perce Tribe. Several comments were addressed in NMFS' final evaluation and recommended determination document, but no substantive changes were required to the Plan or the environmental assessment. A detailed summary of the comments and NMFS' responses is also available on the Salmon Management Division website. Based on its evaluation and recommended determination and taking into account the public comments, NMFS issued its final determination on the Shoshone-Bannock Tribes' Salmon River sub basin salmon and steelhead fishery management Plan.

#### Authority

Under section 4 of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA Tribal 4(d) Rule (50 CFR 223.209) states that the ESA section 9 take prohibitions will not apply to Tribal Plans that will not appreciably reduce the likelihood of survival and recovery for the listed species.

Dated: January 17, 2013

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Angela Somma, Chief, Endangered Species Division, Office of Protected Resources,  
National Marine Fisheries Service.

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